

1 THE HONORABLE JUDGE THOMAS S. ZILLY

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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 CASCADE DESIGNS, INC., a Washington
10 corporation,

Plaintiff,

11 v.

12 JAB DISTRIBUTORS, LLC, an Illinois
13 corporation,

Defendant.

Case No. 2:18-cv-1806-TSZ

DEFAULT JUDGMENT

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15 THIS MATTER having come before the Court on Plaintiff Cascade Designs, Inc.
16 (“CDI”)’s Motion for Judgment on Default, docket no. 10, (the “Motion”) pursuant to Federal Rule
17 of Civil Procedure 55(b)(2) and Local Civil Rule 55(b)(2); the Court having considered CDI’s
18 Motion and the accompanying Declaration of Douglas A. Grady, exhibits and all other filings and
19 papers in this matter; and the Court otherwise being fully advised and for good cause shown; the
20 Court hereby enters the following Judgment:

21 1. CDI has established Defendant JAB Distributors, LLC (“JAB”) is liable on all of
22 the following seven Counts asserted in CDI’s Complaint (Dkt. No. 1) based on CDI’s well-pled
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1 allegations and the facts presented in the Declaration of Douglas A. Grady, which are assumed to
2 be true because JAB has failed to appear in this matter:

- 3 a. Count I: Federal Trademark Infringement, 15 U.S.C. § 1114;
- 4 b. Count II: Federal Trademark Dilution, 15 U.S.C. § 1125(c);
- 5 c. Count III: Federal Unfair Competition, 15 U.S.C. § 1125(a)(1);
- 6 d. Count IV: Washington Common Law Unfair Competition;
- 7 e. Count V: Washington Consumer Protection Act, RCW 19.86.020;
- 8 f. Count VI: Cancellation of Registration No. 4,538,345; and
- 9 g. Count VII: Cancellation of Registration No. 5,138,979.

10 2. JAB having failed to answer or respond to CDI's allegations, the Court takes as true
11 CDI's well-pleaded allegations, and concludes that CDI is entitled to default judgment on all seven
12 Counts of the Complaint. *See Cripps v. Life Ins. Co. of North Am.*, 980 F.2d 1261, 1267 (9th Cir.
13 1992) ("In reviewing a default judgment, this court must take the well-pleaded factual allegations
14 . . . as true. However, necessary facts not contained in the pleadings, and claims which are legally
15 insufficient, are not established by default.") (citation omitted).

16 NOW THEREFORE, it is hereby ORDERED that CDI's Motion for Judgment on Default
17 is GRANTED in part.

18 It is further ORDERED that judgment on Counts I through VII of the Complaint is
19 ENTERED in favor of CDI and against JAB.

20 It is further ORDERED that the Commissioner of the United States Patent and Trademark
21 Office is DIRECTED to cancel Registration Nos. 4,538,345 and 5,138,979.

22 The Court declines to find that this is an "exceptional case" entitling Plaintiff to attorney's
23 fees under the Lanham Act. Exceptional cases involve infringement that is "malicious, fraudulent,

1 deliberate or willful.” *Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000) (internal quotation
2 marks omitted). Here, the pleadings indicate that Defendant possesses registrations from the U.S.
3 Patent and Trademark Office for both infringing marks. *See* Complaint, docket no. 1, ¶¶ 24-25.
4 The Court declines to find that Defendant engaged in malicious, fraudulent, deliberate, or willful
5 infringement where Defendant’s applications matured into registration on the Final Register
6 without rejection by the U.S. Patent and Trademark Office. Plaintiff has not moved for fees under
7 any other provision of law.

8 It is further ORDERED that as of the date of this Order, JAB and its agents, employees,
9 attorneys, successors, assigns, affiliates, and joint venturers, and any person(s) in active concert or
10 participation with JAB, and/or any person(s) acting for, with, by, through, or under JAB, are
11 PERMANENTLY ENJOINED from:

12 a. Manufacturing, marketing, producing, sourcing, importing, selling, offering for
13 sale, distributing, advertising, or promoting any products that display any of the words or
14 symbols THERM·A·SLEEP or THERM-A-SLEEP or any other mark that infringes or is
15 likely to be confused with CDI’s United States Trademark Registration Nos. 1,112,314;
16 1,112,315; 1,599,634; 4,794,076; 4,795,261; 4,795,262; and 4,835,391 for THERM-A-
17 REST® (collectively, “the THERM-A-REST® Marks”);

18 b. Using any trademark that imitates or that so resembles CDI’s THERM-A-
19 REST® Marks as to be likely to cause confusion, mistake or deception, or public
20 misunderstanding as to the origin of JAB’s products or their connectedness to CDI or CDI’s
21 products;

22 c. Using any word, phrase, term, name, symbol, device, or combination thereof
23 that causes or is likely to cause confusion, mistake, or deception as to the affiliation or

1 association of JAB or JAB's products with CDI or CDI's products or as to the origin of
2 JAB's products;

3 d. Making or displaying any statement, representation, or depiction that is likely
4 to lead the public or the trade to believe that (i) JAB's products are in any manner approved,
5 endorsed, licensed, sponsored, authorized, or franchised by or associated, affiliated, or
6 otherwise connected with CDI or CDI's products or (ii) CDI's products are in any manner
7 approved, endorsed, licensed, sponsored, authorized, or franchised by or associated,
8 affiliated, or otherwise connected with JAB or JAB's products;

9 e. Registering or applying to register any trademark, service mark, domain name,
10 trade name, or other source identifier or symbol of origin consisting of or incorporating the
11 mark THERM-A-SLEEP, THERM·A·SLEEP, or any other mark that infringes or is likely
12 to be confused with CDI's THERM-A-REST® marks, or any goods or services of CDI, or
13 CDI as their source; and

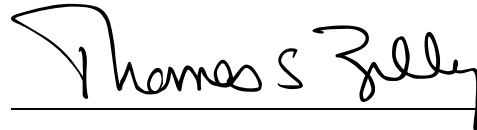
14 f. Aiding, assisting, or abetting any other individual or entity in doing any act
15 prohibited by sub-paragraphs (a) through (e).

16 For the purpose of avoiding any possible hardship to third party individuals and entities
17 such as third-party retailers and suppliers who have current stock of products subject to this
18 injunction, the above injunction applies only to orders of goods placed on or after the date of
19 service of this Order on JAB.

20 It is further ORDERED that, within 30 days of this Order being filed, JAB must deliver to
21 CDI's counsel its entire inventory of infringing products, including, without limitation, its sleep
22 products, packaging, labeling, advertising and promotional material, and all plates, patterns,
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1 molds, matrices, and other material for producing or printing such items, that are in its possession
2 or subject to its control and that infringe the THERM-A-REST® Marks.

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4 Dated this 24th day of April, 2019.

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7 Thomas S. Zilly
8 United States District Judge
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